STATE OF MICHIGAN

COURT OF APPEALS

DR. ZAHRA ARGHAVANI,

Plaintiff-Appellant,

v

LUMINGEN, INC. and DR. A. PAUL SCHAAP,

Defendants-Appellees.

UNPUBLISHED
March 18, 2003

No. 236215, 239893
Oakland Circuit Court
LC No. 00-022939-NZ

Before: Meter, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition under MCR 2.116(C)(10). Plaintiff also appeals the court's order awarding case evaluation sanctions. This case arose when plaintiff sued defendants for terminating her employment in violation of the gender discrimination provision of the Civil Rights Act (CRA), MCL 37.2202, after plaintiff rejected defendant Dr. A. Paul Schaap's alleged sexual advance. We affirm.

Plaintiff argues that the trial court erred in granting summary disposition because a factual question existed regarding whether plaintiff was discharged from her employment with defendant Lumingen, Inc., in whole or in part, because she had rejected a proposition from defendant Dr. Schaap, who was the president of defendant Lumingen. We review the trial court's decision on a motion for summary disposition under MCR 2.116(C)(10) de novo, considering the evidence submitted by the parties in a light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999).

Plaintiff sued defendants under the CRA, which prohibits employers from discriminating against employees with respect to "employment, compensation, or a term, condition, or privilege of employment, because of . . . sex." MCL 37.2202(a). Discrimination because of sex is statutorily defined to include sexual harassment, which in turn is defined as

> unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:
>
> (i) Submission to the conduct or communication is made a term or condition either explicitly or implicitly to obtain employment . . .

> (ii) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment . . .
>
> (iii) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment . . . or creating an intimidating, hostile, or offensive employment . . . environment. [MCL 37.2103(i).]

When sexual harassment falls under one of the first two subsections, it is commonly referred to as "quid pro quo" harassment, and when it falls under the third subsection, it is commonly labeled "hostile environment harassment." *Chambers v Trettco, Inc*, 463 Mich 297, 310; 614 NW2d 910 (2000).

Plaintiff argues that an incident in which defendant Dr. Schaap allegedly grabbed and held her hand, during a one-on-one meeting, and told her that if she took one step toward him, he would take many for her and would do anything for her, fit the definition of quid pro quo harassment. To establish a claim of quid pro quo harassment, an employee must demonstrate by a preponderance of the evidence: (1) that she was subject to any of the types of unwelcome sexual conduct or communication described in the statute, and (2) that her employer used her submission to or rejection of the proscribed conduct as a factor in a decision affecting her employment. *Champion v Nation Wide Security, Inc*, 450 Mich 702, 708-709; 545 NW2d 596 (1996).

In *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464; 652 NW2d 503 (2002), this Court, recently, determined that the Michigan CRA "provides solely for employer liability, and a supervisor engaging in activity prohibited by the CRA may not be held individually liable for violating a plaintiff's civil rights." *Jager*, *supra*, 252 Mich App 485. Thus, *Jager*, *supra*, establishes that plaintiff's CRA claim against defendant Dr. Schaap is not legally cognizable. Consequently, upon a de novo review, plaintiff's CRA claim against defendant Dr. Schaap was properly dismissed.[1]

Regarding defendant Lumingen, the trial court concluded that, even if the alleged conduct could be considered quid pro quo sexual harassment, plaintiff, nonetheless, failed to establish that her response to defendant Dr. Schaap's conduct was a factor in her subsequent termination. We, upon a de novo review, agree with the trial court. To show quid pro quo harassment, "it is not enough to demonstrate harassment and a tangible employment action – there must be a causal relationship between the two." *Chambers*, *supra*, 463 Mich App 297, 322 n 8. The only evidence plaintiff offered respecting defendant Dr. Schaap's conduct after the incident is that on two occasions he allegedly did not acknowledge her in the hallways at work. Furthermore,

---

[1] We note that the trial court granted defendant Dr. Schaap's motion for summary disposition on other grounds before this Court issued *Jager*, *supra*. Regardless of whether the trial court granted summary disposition on proper grounds, we will not reverse a trial court that reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

evidence indicated that an argument with defendant Lumingen's vice-president, not the alleged harassment, was the reason for plaintiff's being placed on a paid leave of absence and ultimately terminated. Therefore, summary disposition was properly granted with respect to defendant Lumingen.

Plaintiff also argues that the trial court erred in granting case evaluation sanctions under MCR 2.403(O)(1) rather than applying the exception to the mandatory sanction rule, MCR 2.403(O)(11). Although we generally review a trial court's grant of case evaluation sanctions de novo, see *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997), because the decision whether to refuse to award costs under MCR 2.403(O)(11) is discretionary, we review the decision for an abuse of that discretion. See *Luidens v 63rd District Court*, 219 Mich App 24, 35-37; 555 NW2d 709 (1996).

Generally, exceptions from mandatory sanctions under "interest of justice" exceptions are only implicated in "unusual circumstances," *Stitt v Holland Abundant Life Fellowship (On Remand)*, 243 Mich App 461, 472, 476; 624 NW2d 427 (2000) (interpreting MCR 2.405(D)(3)), such as where the case involves an issue of public interest, the law is unsettled, substantial damages are involved, or where the parties have engaged in "gamesmanship," such as making a de minimis offer after a case evaluation award is rejected in order to avoid sanctions. *Luidens*, *supra*, 219 Mich App 35-36.

Plaintiff does not argue that this case fits into any of the categories of exceptions, nor does plaintiff explain why the court's decision not to apply the exception, in this case, was contrary to the interests of justice or an abuse of discretion. Rather, plaintiff merely states that sanctions should be set aside because the trial court scheduled the summary disposition hearing for two months after the case evaluation response. However, a review of the transcript indicates that the court took into account the timing of events, and determined that defendants were entitled to only $4,000 of the $14,585 they requested.

An abuse of discretion occurs only when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Marrs v Bd of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). Because the trial court took into account the facts plaintiff alleges and stated valid reasons for reaching its conclusion, the trial court's decision not to except plaintiff from the general rule requiring sanctions was not an abuse of discretion.

In view of our disposition, we need not address plaintiff's remaining arguments.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Michael J. Talbot